

# CRIMINALIZATION POLICY IN RESIDENTIAL DECREES AND SYNCHRONIZATION WITH THE CODIFIED CRIMINAL LAW

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## *Abstract*

*The synchronization of criminal provisions in the residential decrees with the codified criminal law has not yet been made due to variety of legal sources to which residential decrees may refer. Among the differences which synchronization are the difference in the provisions of witnesses and also the difference in the interpretation made by the regulators*

**Keywords:** Policy, criminalization, Local Government Regulation, synchronization.

## Introduction

The Study of criminalization policy in the Local Government Regulation (Perda) to establish a synchronized local criminal law with the codified criminal law is important. At least based on certain reason such as *First*, the existing issues evolving around "problematic" Perda which caused by the overwhelming excitement from the Regional Government to generate regional income, by competing to produce as much Perda as possible. For those Perda to be obeyed, each region drafts a criminalization policy in the Perda, which it differs between one region and another. *Second*, there are some Perda considered as problematic because there are contradictions between the criminalization policy and the higher norm, It happens because the non-existing operational regulation that governs it. Thus, every region interprets their authority on their own.

The distribution of authority between the Central Government and the Local Government in the exercise of decentralization in Indonesia based on UU Number 22 Year 1999 Concerning the Local Government which renewed by UU Number 32 Year 2004 Concerning the Local Government follows the pattern of General Competences, with the exception such as mentioned in the Article 10 phrase (3) UU Number 32 Year 2004,"The administrative affair<sup>1</sup> that becomes the affair of the government consist of:

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<sup>1</sup> in exercising government's affair as stated in the Article 10 phrase (3) UU Number 32 Year 2004, government could forward or carry out by themselves, a certain government's affair to the government or the representative of government in the region or assign the local government and/or village government. see Article 10 phrase (4) UU Number 32 Year 2004 concerning the Local Government.

authorities in the politics of foreign affair, defense, securities, judicial, monetary and national fiscal, and religion”.

In the UU Number 32 Year 2004, particularly in the Article 1 number 5, it emphasized that the local autonomy is right, competence, and obligation of the local autonomy to govern and organize on their own the government's affair and local society's interest in accordance with the constitutional regulation.

Local Government Regulation<sup>2</sup> governs internal affairs in economic and supporting duty. In autonomic, Local Government Regulation could govern every government affair and people's interests.<sup>3</sup>

In the progress, Criminal Law is often used and reliable in terms of governing and put an order to the people through constitutional regulations. The dynamics of law could be seen from the using of criminal sanction by addressing the chapter of “criminal sanction provision” at the end of most constitutional regulation in Indonesia. The addressing of the chapter concerning criminal sanction provision is not only seen as a central government's constitutional regulation product in form of “Constitution”, but is can be also seen as a local constitutional regulation product in form of “local government regulation”.<sup>4</sup>

Forming the Perda by Local Government could be conducted for criminalization policy<sup>5</sup> is stated in Article 71 phrase (2) UU Number 22 Year 1999. it is stated that “Local Government Regulation could accommodate a detention punishment with the maximum length of six month or in the alternative, fines with the maximum amount of RP 5.000.000,00 (five million Rupiahs) with or without a deprivation of certain goods for the region, exception were made if the constitutional regulation ruled otherwise”. Then according to Article 143 phrase (2) UU Number 32 Year 2004, stated that: “Local Government Regulation could accommodate a detention punishment with the maximum length of six month or in the alternative, fines with the maximum amount of RP 50.000.000,00 (fifty million Rupiahs)”.

The unsynchronized criminalization policy with Perda in Indonesia, could be divided in four categories<sup>6</sup>:

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<sup>2</sup> The content of Perda consist of principles such as: a. protection; b. humanity; c. nationality; d. clannish; e. unity; f. bhineka tunggal ika; g. fairness; h. equality before the law and politics; i. order and certainty of law; j. balance, aptitude, and harmony. Other than these principles, Perda could contain other principle which is in accordance with the substance of the particular Perda. See Article 138 phrase (1)(2) UU number 32 year 2004 concerning the Local Government.

<sup>3</sup> Bagir Manan, *Menyongsong fajar Otonomi Daerah*, PSH FH UII, Yogyakarta, 2002, p. 72.

<sup>4</sup> The product of constitutional regulation which addressed a chapter about “criminal provisions” that could be find in UU Number 12 Year 1985 concerning Land and Building Tax, UU Number 23 Year 1992 concerning Health, UU Number 8 Year 1995 concerning the Capital Market, UU Number 23 Year 1997 concerning the Environment Management, UU Number 8 Year 1999 concerning Consumers Protection and other constitutional regulation.

<sup>5</sup> According to Barda Nawawi Arief, the process of criminalization must pay attention to some of the consideration aspect such as: a) The using of criminal law must take note the aim of national development, which is creating a fair and healthy society physically and spiritually based on the Pancasila; b). The action that needs to be prevented and tackled by the criminal law must be an action that is not desired, which is an action that creates disadvantage (materially and spiritually) upon the society; c) The using of criminal law must calculate the cost and benefit principles, and the social cost as well; d) The using of criminal law must take note the capacity or ability of the law enforcer institution, it should not create an overload of work. See Barda Nawawi Arief, *Bunga Rampai Kebijakan hokum Pidana*, PT. Citra Aditya Bakti, Bandung, 1996, p. 33-34.

<sup>6</sup>see Teguh Prasetyo, *Kebijakan Kriminalisasi Peraturan Daerah Guna Mewujudkan Sinkronisasi hukum Pidana Lokal dengan Hukum Pidana Kodifikasi*, Disertasi, Program Pascasarjana Fakultas Hukum Universitas Islam Indonesia, Yogyakarta, 2006.

1. Criminalization Policy delegated by the Constitution, for example the Local Government Regulation concerning Retribution and Tax;
2. Criminalization Policy which already being govern by the codified criminal law, for example the Local Government Regulation concerning alcoholic beverages, prostitution;
3. Criminalization Policy derived from Islamic Law, for example the Qanun of Nangroe Aceh Darussalam Province number 11 Year 2002 concerning the Exercise of Islamic *Syariah* in *Aqidah*, *Ibadah*, and Islamic *Syari'at*;
4. Criminalization Policy derived from indigenous law, for example the Local Government Regulation concerning indigenous tradition that is still being uphold in that region. Such as the local Government Regulation Number 12 year 1999 concerning Road Digging, Reforming Pedestrian Way and Planting in Region II Bandung.

The difference between every region's criminal sanction draft on determining the type or maximum criminal sanction in Perda is because there are no exact standards and differences between one constitution and another, for example Article 143 phrase (2) UU Number 32 Year 2004. If it was related with the UU Number 18 Year 1997 concerning Tax and Local Retribution, it shows that there are no equality. The type of criminality as well as the maximum sanction as stated in Article 37 until Article 41 UU Number 18 Year 1997 concerning Tax and Local Retribution shows that the maximum sanction is around 6 month until 2 years, thus the criminal sanction that could be imposed for tax criminal law and sanction for local retribution may be in form of detention sentence or jail sentence. This condition will obviously create a major problem when the Local Government formulates the conducts that may be imposed with criminal sanction in the Perda especially concerning tax and local retribution.

In accordance with UU Number 22 Year 1999 concerning the Local Government, based on Article 71 phrase (2), Perda could only contain a criminal sanction of detention with the maximum length of 6 (six) month or fines with the maximum amount of Rp 5.000.000,00 (five million rupiahs), the difference with UU Number 32 Year 2004 concerning the Local Government, Article 143 phrase (2) allows a criminal sanction of detention with the maximum length of 6 (six) month or fines with the maximum amount of Rp 50.000.000,00 (fifty million rupiahs), but the sanction could also surpass 6 month of detention, or even a jail sentence, if we look at UU number 18 Year 1997 concerning Tax and Local Retribution. Based on the Indonesian Criminal Code (KUHP), sanction for the conduct of liberty deprivation is detention punishment with the maximum length of 1 (one) year, the maximum sanction that surpass one year is jail punishment.

The factual condition is the existence of problematic Perda that is caused by the theory of criminalization policy which are not being paid attention to in drafting the Perda. The nullified Perda contradicts with the higher constitutional regulation, public interest, and without using standards of law. Perda should be measured with either national or international standards of law. International standards such as petty crime is not imposed by criminal sanction in most State, petty crime is only being processed in court to show the wrongdoings, if indeed a sentence was given, the execution could be suspended, the person could even be released after being forgiven of pardonable, but if they are once again conducting the same wrongdoing, then the present sanction will be combined with the past. National standards of Perda is a petty crime which is a violation, quick trial with jail sentence not more than 1 (one) year and detention sentence or goods alternative and in some cases, conditional punishment.

From the explanation above, the problem could be defined into studies in these writings, (1) Are the aspects of criminalization policy in Perda had already synchronized with the codified criminal law? (2)

What strategy needs to be developed in order to establish the synchronization of local criminal law with the codified criminal law?

### **Criminalization Policy in Local Government Regulation**

Basically, the policy of imposing criminal sanction in Perda could also be considered as “criminal policy”. According to Marc Ancel, “criminal policy” is the rational organization of the control of crime by society.

In relationship with criminalization problem, Muladi emphasize about certain measurements that in doctrinaire angle needs to be taken note as a guideline, which is:<sup>7</sup>

1. Criminalization should not send the image of “over criminalization” that count as a misuse of criminal sanction.
2. Criminalization should not be in *ad hoc* form.
3. Criminalization should contain the substance of victimizing either actual or potential.
4. Criminalization should calculate the budget analysis, result, and *ultimum remedium* principle.
5. Criminalization should produce enforceable regulation.
6. Criminalization should have the society's support.
7. Criminalization should contain the substance of “*subsosialiteit*” (resulting hazard for the society, even in a very small scale).
8. Criminalization should take note of the warning that every criminal regulation restrict the society's freedom and give the possibility to the law enforcer to restrain that freedom.

Because the importance of formulation stage in functioning or operating the penal policy, the policy of using criminal sanction in Perda as part of penal policy should take note of the measurements or the criteria above. The consideration basis of the policy of using criminal sanction in Perda through addressing criminal provisions should not disengage from the criteria or the measurements in criminalization policy.

The law regulators do not only determine the conduct that could be imposed with criminal law, but also designate sanctions that could be imposed to, as well as the maximum criminal sanction.<sup>8</sup>

The determination of what sanction is best use or imposed to the wrongdoer have a tight relationship with the criminal system and criminal procedure. Criminal system and procedure have a very wide range.

The criminalization policy in Perda is the authority of local Government to make such Perda, the writer is using competence/authority theory to analyze this authority. Prajudi Atmosudirjo<sup>9</sup> differentiates between competence (*bevoegdheid*) and authority (*gezag*). What is meant by “authority” is the “formal power”, a power which derived from the legislative authority (given by the constitution) or from the executive/administrative authority. Furthermore, authority which consists of several competences is an authority over certain administrative field or certain affair's field which is complete. Whereas competence is only concerning certain matter. Within an authority, there are several competences (*rechtsbevoegdheid*).

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<sup>7</sup> Muladi, *Kapita Selektta Hukum Pidana*, Badan Penerbit universitas Diponegoro, Semarang , 1995, p. 256.

<sup>8</sup> Roeslan Saleh, *Segi Lain Hukum Pidana*, Ghalia Indonesia, Jakarta, 1984, p. 18.

<sup>9</sup> Prayudi Atmosudirjo, *Hukum Administrasi Negara*, Ghalia Indonesia, Jakarta, 1981, p. 76.

Competence is a power to exercise certain public law act, such as a competence to sign or publish a permission letter from an executive officer or in the name of the ministry.<sup>10</sup>

Perda is part of the constitutional hierarchy, therefore the theory of constitution must be used in drafting a Perda that have a synchronization with the national constitution.

The theory of constitution must follow certain principle, which is:<sup>11</sup>

1. Principles that derived from the politics of constitution and basic constitution (UUD) regulation (constitutional principle and law application);
2. The non-retroactive principle;
3. The law shifting principle;
4. The hierarchy of law principle (*lex superior derogate legi inferiori*);
5. The principle of the special law that override the general law regulation (*lex specialis derogate legi generali*);
6. The principle of the recent law that override or nullify the old law regulation (*lex posterior derogate legi priori*);
7. The principle that prioritize the written law over the unwritten;
8. The principle of pursuance, justice, public needs, and public order.

### **The Basic Concept of Criminalization policy in Local Government Regulation**

According to Barda Nawawi Arief<sup>12</sup>, the two basic thoughts in criminalization policy by using criminal law suggestion is the problem of determining which conduct that should become a criminal act and what sanction best imposed to the wrongdoers. Based on the theory above, we could see the indicators of the basic concept in criminalization policy within Perda. The indicators are:

1. Reasoning of the criminalization policy, whether the reason of Perda which is not legated by the constitution towards Perda concerning Tax or Local Retribution;
2. Type of criminalization and numbers of Perda which already being legislated by the local Government since 1999 until 2004;
3. Criminal sanction that are drafted inside the Perda in Central Java, either criminal sanction of Perda which is not legalized by the constitution or criminal sanction delegated by the constitution that consist of Tax Perda and Perda concerning Permits and Retribution;
4. Prohibited action in Perda, the one which are not delegated by the constitution or the delegated ones;
5. Perda that have local characteristic and the reason to make Perda is appropriate with the local condition where each Perda is legislated.

Basically, the reason of Perda legislation without any delegation by the Constituiton which based from the prohibition by religious norm, and social norm and other factor that influenced the environment:

- a. Perda on alcoholic beverages because the alcoholic beverages is against the religious norm and social norm, and also harmful for our body;
- b. Perda on prostitution because prostitution have a negative impact in the society;

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<sup>10</sup> *ibid.*

<sup>11</sup> Bagir Manan, *Hukum Positif Indonesia: Satu Kajian Teoritik*, FH UII Press, Yogyakarta, 2004, p. 52-65

<sup>12</sup> Barda Nawawi Arief, *Op., Cit.*

- c. Regulation concerning street vendors, the reason is to create an orderly, clean, and beautiful environment in the city;
- d. Public mining, because of the non-renewable natural sources, therefore it should be managed by the Local Government;
- e. Gambling, because it disturbs the order, security, and also having negative impact in the society.

As for the ground of Perda which is delegated by the constitution in Central Java Province, the Perda legislation that is meant for the importance of Local Tax and income from economically local potential business, with the classification: (a) Hotel, entertainment, restaurant, street lighting, park, on the ground of tax and local retribution; (b) bird's nests business for local income (PAD).<sup>13</sup>

Also for the ground of Perda for permission and retribution by constitutional delegation consist of 6 (six) objects; motor vehicle testing, recreation and sport, health services, bus station retribution, permission for public transportation's designated route, and construction works. Those six Perda emphasize to change the local income (PAD), and only small portion of it that is meant for law enforcement and public order as a local law norm complement that will be developed for Perda in the future.

There are many aspects of consideration, as mentioned by Barda Nawawi Arif, that are not being completely conducted in deciding a criminalization, such as the using of criminal law should take note the aim of national development. The action that are tried to be prevented by criminal law must be an unwanted action, which is an action that creates disadvantages. The using of criminal law should also consider the principle of expense and result. It should also consider the ability of the law enforcers. The writer suggest that it needs to take note of the four consideration above, and also added by the consideration of local characteristic in the process of criminalization.

The ground for criminalization in Perda which are not delegated by the constitution could be seen from whether or not the theory of criminalization ground had already considered the ground of prohibiting certain action, which is the aim of national development, an unwanted action and calculating the principle of expense and result. However, in the drafting of Perda does not explain about the law enforcement, it is important to know the capacity or ability of the law enforcer as well as law enforcement institution. The ground for criminalization in Perda that is delegated by the constitution because of the existence of constitution amendments, is not yet taking note to the criminalization ground as in accordance with the theory of criminalization.

It appears that the Local Government has no uniformity in the basic concept of drafting Perda that is not delegated by the constitution. Some Perda Draft the sanction by addressing minimal and maximal punishment, while others only address the maximal sanction that could be imposed, with the amount of fine that could be given.<sup>14</sup>

The drafting of Perda in Province/ Regency/ City in Central Java does not have uniformity in the standards of criminal sanctions and Local Government has not understood how to establish the right sanction. It resulted in an excessive amount of differences between one Perda and another that govern the same thing. It creates confusion among the society to obey the regulation in Perda.

Criminal sanction in Perda is still emphasizing on retributive criminal sanction (retributive theory), that sees punishment as a form of retributive action for the violation that has been done and it aims to give

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<sup>13</sup> see Teguh Prasetyo, *Kebijakan Kriminalisasi...*, Op., Cit. p. 171-174

<sup>14</sup> *Ibid*

deterrent effect to the wrongdoers so he could experience the result of his action. It could be seen from Perda sanctions in Central Java.

The general guidelines in criminal law could be divided into criminal sanction and sanction for conduct. Both derived from a different basic idea. Criminal sanction derived from the basic idea of “the reason why a punishment is held”, whereas sanction for conduct derived from the basic idea of “for what the punishment is held”.

According to the aim, the criminal sanction and sanction for conduct also derived from a different basic idea. Criminal sanction is meant to inflict a special suffering to the wrongdoers so he could feel the result of his action. While sanction for conduct is aimed to educate.

In accordance with the development of science, it is best to emphasize on the sanction for conduct. This sanction is a non-retributive sanction, only aimed for certain prevention which is to protect the society from the threads that hamper their interests.

The sanction decree in Perda, in any type and form of the sanction should base on the authority given for the Local Government to create a criminalization in Perda and oriented to the standard aim of punishment. After the aim of punishment, then the appropriate type and form of sanction for the violation of Perda could be decided.

### **Synchronization between Local Criminal Law and Codified Law**

The writer had conducted a research which indicates that among the Perda which are requested for a legitimation by the Ministry of Internal Affair, there are 9 Perdas that is being nullified.<sup>15</sup> There is also non-uniformity in the Constitutional Regulation that becomes the legal basis to create the Perda. Thus, in drafting the Perda, each Local Government refers to different constitutional regulations.

**Table 1**

#### **Principle of Criminal Sanction in Codified Criminal Law**

<b>No.</b>	<b>Regulation</b>	<b>Concerning</b>	<b>Content</b>
1	Article 1 phrase (1) KUHP	Legality Principle	the general prohibition on the imposition of criminal sanctions for acts or omissions that were not criminal at the time of their commission or omission. The principle is also thought to be violated when the sanctions for a particular crime are increased with retrospective effect
2	Article 10 KUHP	Punishment	Criminal Punishment Consist of: a. Basic punishment: 1. Death Penalty 2. Jail Punishment 3. Detention Punishment 4. Fine Punishment b. Additional punishment:

<sup>15</sup> *Ibid*, p. 217

			<ol style="list-style-type: none"> <li>1. Deprivation of Rights</li> <li>2. Deprivation of Property</li> <li>3. Announcement of Adjudication</li> </ol>
3	Article 12 Phrase (1) KUHP Phrase (2) KUHP	Jail Punishment	Jail punishment is a lifetime sentence or for a certain period of time. A jail sentence for a certain period of time is 1 day for the very least period and 15 years for the maximum period
4	Article 18 Phrase (1) KUHP	Detention	A detention punishment is imposed for 1 day for the very least period and minimum period 1 year for the maximum period.
5	Article 30 Phrase (1),(2),(3) KUHP	Fine	Fine is imposed for 25 cent for the least minimum amount, in case it is not being paid, it would be changed into detention punishment which is imposed for 1 day for the very least period and 6 months for the maximum period.

Differences in the criminal sanction between each Perda are caused by the differences in the constitutional regulation that are being referred to.

Table 1 shows that the legality principle is addressed using Article 1 phrase (1) KUHP. This principle is one of the fundamental principles in criminal law. According to the legality principle, a person could not be punished unless by the power of the existing criminal law regulation, before the act is committed. The consequences of the legality principle, criminal law must be applied non-retroactively, could not be analogized, and must be in form of a written law.

Criminal punishment is regulated under Article 10 KUHP which stated that a punishment is divided into two categories. First is the basic punishment that consists of death penalty, jail punishment, detention, and fine. Second is additional punishment that consists of deprivation of rights, deprivation of property, and announcement of adjudication.

The regulation in Article 12 phrase (1) and (2) KUHP governs the jail punishment. A jail punishment could be imposed for a lifetime or a certain period of time. The very least period of a jail punishment is 1 day while the maximum period is 15 years in succession. Article 18 phrase (1) KUHP governs the detention punishment which is 1 day for the least period and 1 year for the maximum. In Article 30 phrase (1), (2), and (3) governs the fine punishment. The very least amount of fine is 5 cent which if not being paid could be changed into a detention punishment. The period of the detention is 1 day at the very least and 6 months for maximum.

### **Strategies that Needs to be Developed to Create Synchronization between Local Criminal Law and the Codified Criminal Law.**

The content of an ideal Perda , whether the drafting of the crimes or the sanction, is a breaking down from the higher constitutional regulation, includes the local condition, does not contradicts the society's interest and the constitutional regulation above it.



The research shows that a lot of Perda that are being nullified is because the drafting of the crimes and the sanction does not fulfill the standard of law. If the process of creating Perda is in accordance with the ideal standard of law, the Perda could act effectively, because it had already fulfilled the judicial, sociological, and physiological aspects. In reality, the application of Perda is not as the ideal way. A lot of products of law, in this case is Perda, does not fulfill every aspect that could create an effective law.

The strategy needs to be developed, covers three aspects, the law material aspect, sanction aspect, and law enforcement aspect. Some Perda in Central Java does not address the qualification for a conduct which constitute as a violation or crimes. The differentiation between these two actions is important as it has become a conventional basis. Every penal system in Indonesia, although would be left in the amendment of the KUHP and also an important choice from a procedure of criminal law's point of view, is related with the absolute competence.

In drafting the Perda's criminal provisions, it should at least be synchronized with the law above it using the "*lex superiore derogate legi inferiore*" principle. It should also pay attention to the equality aspect and deviation of law using the "*lex specialis derogate legi generalis*", like the regulation in Nangroe Aceh Darusalam (NAD).

The dividing of criminal sanctions in Perda could be categorized as sanction of detention, sanction of fines and sanction for an act which is suggested to be imposed with administrative sanction. Criminal sanction in Perda usually used detention and fines, although there are some Perda that imposed administrative sanction.

In drafting the criminal sanctions in Perda, the Local Government should obey the authority that is given by the regulation above them. The drafting should not contradict such authority, whether the authority given by the constitution or by the codified criminal law. A detention punishment must refer to the codified criminal law which stated that it should not be imposed for more than 1 year, because the criminal sanction in Perda, are generally not in form of crimes but only a violation, except the criminal sanction for Perda in Nangroe Aceh Darusalam (NAD).

Local Governments policy in drafting the Perda should be considered to effectively implement of fine punishment which in the future could be use to lower the burden of the criminal judicature system and indirectly increase the Local Income (PAD).

As for the amount of the fine, it needs a more flexible Policy in Perda. Considering that the fine punishment is different than the other basic punishment, is a type of punishment that possessed the value of money and economics. The main consideration for fine punishment is how the amount should be easily changed due to the influence from the monetary progress and also society's economic development, nationally or internationally. Every Local Government's policy which increased the amount of fine punishment, but still having a relative value that exists in a certain period of time, would still felt like a minor punishment.

According to the KUHP system, substitute detention is a unite system with the fine punishment because the consideration is based on the amount of the imposed fine. Local Government's policy concerning the amount of fine punishment is easily changed, therefore it must be followed with changes in the Local Government's policy concerning the period of detention that substitute fine punishment.

Law enforcement to execute Perda will become very important, in the era of local autonomy, to help the Local Government in having its freedom to manage and organize law regulation in the area.

In the effort to prevent the admission of degree duplication, there are possibilities that Local Government will go with the decision of distributing the authority between PPNS and Police Guard Corps (Satuan Polisi Pamongpraja). If the Local Government took this policy, then it needs a study on law effectiveness to understand how such authority distribution will be conducted, so there will be no overlapping in the local law regulation. There is a general principle in the Law of Criminal Procedure that

says, only the officer which has a special competence given by the constitution that has the right to investigate a criminal case in the process of law enforcement.

A model of penal policy needs to be developed to enforce the local law regulation related with rules stated in Article 6 KUHP.

The rule of examination procedure in court, concerning a violation of Perda which could be imposed with less than 1 year punishment, could be conducted in a speedy examination process in court.

The law harmonization concept between the field of national law and local law in the settlement of criminal cases based on law in Perda, is meant to smooth the system of autonomy region decentralization and democratization of criminal court held by the local Government in regency/city all over Indonesia.

## Conclusion

Based on the explanation above, it could be concluded that the Local Government's basic concept in formulating the criminalization policy is focusing more on increasing the Local Income (PAD) and not on the reason of criminalization as in accordance with the theory of criminalization. Thus, the requirements to conduct such criminalization are not fulfilled completely. In drafting the criminalization in Perda, uniformity does not exist in each Local Government. It all depends on the constitutional regulation that becomes the basis to create Perda, such was the case to determine the sanction in Perda.

There is no synchronization between the local criminal law and the codified criminal law, it is considering the large amount of law regulations that could be refer as the ground to create Perda, and in each law regulation contain different types of sanction. There are also possibilities of different interpretation by the Perda regulators. The criminalization theory and the aim of criminalization in the context of determining the criminal sanction, in the stage of legislation policy, is not fully understand. Therefore, the types and forms of sanction in Perda is not only creates inconsistency between one perda and another, but also a sanction which is not objective and not rational. The non-synchronized Perda could be seen from the existence of Perda which is being nullified by the Ministry of Internal Affair and also from the Supreme Court's judicial review.

The Strategies that needs to be developed in creating synchronization between local criminal law and the codified criminal law, are: (1) the material aspects of law in the Perda Criminal Law must refer to a postulation besides synchronization with the law above it using the principle "lex superiori derogate legi inferiori", it must also take note of the aspect of equivalence by using the principle of "lex specialis derogate legi generali"; also considering whether the action constitute as crimes or violation. (2) The criminal aspects within Perda in Central Java must be qualified in: Detention Punishment, Fine Punishment, and Administrative Punishment. (3) In forcing the Perda, Local Government could form an institution assigned to enforce the Perda by referring to the existing Law of Criminal Procedure, therefore it can prevent the confusion in handling the violation of Perda.

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